

STATE OF MICHIGAN
COURT OF APPEALS

LIONEL STEWART,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

November 16, 2001

No. 218800

Ingham Circuit Court

LC No. 98-088021-AA

Before: Holbrook, Jr., P.J., and Hood and Griffin, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order of the trial court dismissing plaintiff's petition for judicial review. We reverse and remand.

On July 16, 1997, plaintiff failed to provide a urine sample for random drug screening. After an administrative hearing, plaintiff was found guilty of a major misconduct for failing to complete a drug test. The hearing report concludes that plaintiff's failure to produce a urine specimen was voluntary, not involuntary as plaintiff had claimed. As he did during the administrative proceedings below, plaintiff claims in his brief on appeal that the failure to provide the required sample was due to an enlargement of his prostate. Plaintiff claims he attempted to produce the sample, but because of his condition was unable to provide the required amount. Plaintiff's request for a rehearing of the decision was denied, and that decision was mailed to plaintiff on December 12, 1997.

Pursuant to MCL 791.255(2), plaintiff had sixty days (i.e., February 10, 1998) in which to file an application for direct review in the circuit court. Plaintiff mailed a petition for review dated January 9, 1998, to the circuit court. The court apparently received the document on January 20, 1998. Plaintiff also moved to waive filing fees because of indigence and sent along a certificate of plaintiff's institutional account activity. On January 28, 1998, pursuant to MCL 600.2963, the circuit court suspended the filing of the action, and ordered that plaintiff pay an initial filing fee of \$98.50, with the remaining \$1.50 to be paid at a later date. The court ordered that all documents relating to the action be returned to plaintiff. The court also ordered that

Within 21 days of the date of this Order, [plaintiff] . . . must resubmit to this Court all documents relating to this action, with the filing fee as Ordered herein, and one of the certified copies of this Order. If these documents are not received within 21 days of this order, the matter will be DISMISSED.

In a letter dated January 30, 1998, plaintiff informed the circuit court that he did not have \$98.50 in his account. He further indicated that he was directing defendant to forward his entire account balance, which stood at \$72.49. Court officer Erik L. Walter responded in a February 5, 1998 letter that the full initial fee was required by February 18, 1998. Plaintiff pleadings and a check for \$72.49 were returned by the court to plaintiff. On February 12, 1998, plaintiff resubmitted his pleadings and indicated in any accompanying letter that his mother was simultaneously sending \$100 for the filing fee. In a February 18, 1998 letter to plaintiff's mother, Walter explained that her \$100 check had not been properly made out:

I am in receipt of your check in the amount of \$100.00. However, the check must be made out to: The Ingham County Circuit Court and not to me. Therefore, I am returning the check and asking that you make out a second check to the Ingham County Circuit Court for \$100.00. Please send the check to my attention . . . at the following address:

Once I receive this check, I will ensure that this matter is processed for your son. . . .

The trial court's docket indicates that the case was assigned on March 18, 1998.

On June 11, 1998, defendant filed a motion to affirm its decision on the misconduct issue. Plaintiff filed his response on July 9, 1998.¹ No other actions were taken until almost one year later, when the trial court dismissed the matter for lack of jurisdiction. The court based its decision on the sixty day filing rule of MCL 791.255(2). The court reasoned that because the fee was required before the case could commence, plaintiff's petition for judicial review was untimely. No reference is made to MCL 600.2963 in the court's opinion.

We believe the record implicitly establishes that initially, the trial court considered the failure of plaintiff's mother to write out the proper payee to be a ministerial matter that did not deprive it of jurisdiction over this case. We agree with this position. Walter's February 18 letter establishes that plaintiff had resubmitted his documents and filing fee to the court before the lapse of 21 days from the court's order of January 28, 1998. MCL 600.2963(1). The fact that plaintiff's mother had named as payee the court officer with whom plaintiff had been corresponding does not diminish the fact that plaintiff had timely taken economic responsibility for his decision to appeal.

Indeed, Walter's letter indicates that the court considered that the requirements of MCL 600.2963 had been met. As his letter of February 5 indicates, Walter was well aware of the February 18 deadline. Yet, in his February 18 letter, Walter does not indicate that the deadline had not been met by plaintiff and that the case was therefore going to be dismissed. Rather, Walter asked that plaintiff's mother take an additional action to remedy the payee error. Walter even indicated that once this problem had been rectified, the case would proceed.

¹ Plaintiff also filed motions for discovery and to reassign on July 9, 1998.

MCL 600.2963(1) states that

[i]f the filing fee or initial partial filing fee is not received within 21 days after the day on which it was ordered, the court shall not file that action or appeal, and shall return to the plaintiff all documents submitted by the plaintiff that relate to that action or appeal.

In this case, the appeal was filed, was assigned, and continued for approximately one year. These actions of the trial court further indicate it concluded that plaintiff had complied with the statutory requirements. If not, the court was required not to file the appeal and to return plaintiff's documents. It is clear that the court did file the matter, and it is reasonable to conclude from Walter's February 18 letter that the court retained all of plaintiff's documents.²

Under the circumstances of the case, we believe the trial court erred in dismissing plaintiff's case. We therefore reverse the circuit court and remand for reinstatement of plaintiff's appeal. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ Harold Hood

/s/ Richard Allen Griffin

² Defendant argues that this Court should presume that the documents were returned. We disagree. The clear import of the February 18 letter is that the documents were retained. Walter did not indicate that he was returning the documents with the returned check, nor did he ask that plaintiff's mother return both the properly made out check and plaintiff's pleadings. He also indicated that once the check was received, he would ensure that the matter would be processed. Walter could not fulfill this promise unless the court was in possession of all the documents it needed.